

**MARSHA M. HOLLIE**  
Claimant

**RIVERSIDE HOSPITAL**  
Respondent

**PHICO INSURANCE COMPANY**  
Insurance Carrier

[illegible]

## ORDER

## APPEARANCES

## RECORD AND STIPULATIONS

## ISSUES

The Administrative Law Judge awarded claimant a 7.5 percent permanent partial disability based on her functional impairment. The claimant contends the record proves her functional impairment is greater than the 7.5 percent found by the Administrative Law Judge. Work disability was not an issue. Therefore, the narrow issue before the Appeals

Board for review is the appropriate percentage of permanent functional impairment suffered by claimant as a result of her work-related low-back injury.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

Claimant injured her low back while employed by the respondent on April 27, 1996. Respondent provided medical treatment for claimant's injury through Riverside Occupational Health Services until September 24, 1996, when orthopedic surgeon Kris Lewonowski, M.D., was appointed by the Administrative Law Judge as the authorized treating physician. Dr. Lewonowski did not testify in this matter, but his medical records were stipulated into evidence by the parties.

Dr. Lewonowski first saw claimant on November 18, 1996. He diagnosed mild degenerative disc disease of the lumbosacral spine with chronic lumbosacral strain. The doctor prescribed physical therapy, nonsteroid anti-inflammatory medication, and exercises. In a letter to respondent's attorney dated November 18, 1996, Dr. Lewonowski opined claimant should reach maximum medical improvement in four to six weeks. Therefore, he opined at that time claimant had no functional permanent impairment rating.

Claimant remained under Dr. Lewonowski's care and continued physical therapy until May of 1997. In a letter to claimant's attorney dated May 18, 1997, the doctor assessed claimant with a whole body 6 percent functional impairment, utilizing the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised).

At claimant's attorney's request, Pedro A. Murati, M.D., board certified in rehabilitation and physical medicine, examined and evaluated claimant on August 29, 1996, and July 28, 1997. Dr. Murati testified in this matter on November 14, 1997. He also diagnosed claimant with a lumbosacral strain. After he examined claimant on July 28, 1997, in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, he opined claimant's impairment of function was 15 percent.

Effective April 4, 1996, the legislature amended K.S.A. 44-510e(a) to require functional impairment to be established by competent medical evidence and based on the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, if the impairment is contained therein. Therefore, since claimant's date of accident was April 27, 1996, the fourth edition of the AMA Guides should be used to measure claimant's functional impairment. Dr. Murati's 15 percent functional impairment rating is the only medical opinion contained in the record based on the fourth edition of the AMA Guides.

The Administrative Law Judge made a finding in her Award that Dr. Lewonowski found claimant had no impairment of functional rating according to the fourth edition of the

AMA Guides. However, the Appeals Board disagrees with that finding. The Appeals Board has reviewed Dr. Lewonowski's letter to respondent's attorney dated November 18, 1996, and finds Dr. Lewonowski did not identify the edition of the AMA Guides when he stated "she has, basically, no rating at this time." Additionally, the Appeals Board finds Dr. Lewonowski did not express an opinion on functional impairment at that time because claimant had not met maximal medical improvement and the doctor had prescribed further medical treatment.

The Appeals Board acknowledges respondent's argument that Dr. Murati's functional impairment rating of 15 percent is incorrect because the fourth edition of the AMA Guides requires the use of the injury model for determining claimant's functional impairment instead of the range of motion model used by Dr. Murati. The respondent contends the correct measurement of claimant's functional impairment utilizing the injury model would be 5 percent. The Appeals Board disagrees with the respondent. The Appeals Board concludes that Dr. Murati's testimony was unequivocal when he concluded that claimant's condition was not included in the injury model and therefore, the fourth edition of the AMA Guides requires for claimant's impairment of function to be determined by the range of motion model.

Accordingly, the Appeals Board finds claimant is entitled to permanent partial disability benefits based on Dr. Murati's 15 percent functional impairment rating as determined by the fourth edition of the AMA Guides.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes dated January 23, 1998, should be, and is hereby, modified as follows:

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Marsha M. Hollie, and against the respondent, Riverside Hospital, and its insurance carrier, Phico Insurance Company, for an accidental injury which occurred on April 27, 1996, and based upon an average weekly wage of \$144.70.

Claimant is entitled to 14 weeks of temporary total disability compensation at the rate of \$96.47 per week or \$1,350.58, followed by 62.25 weeks of permanent partial disability compensation at the rate of \$96.47 per week or \$6,005.26 for a 15% permanent partial general disability, making a total award of \$7,355.84, which is all due and owing and is ordered paid in one lump sum less amounts previously paid.

All remaining orders set forth in the Administrative Law Judge's Award are adopted by the Appeals Board.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Garry L. Howard, Wichita, KS  
Scott J. Mann, Hutchinson, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director